

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FERNANDO G. HERNANDEZ and DEPARTMENT OF THE AIR FORCE,  
ROBINS AIR FORCE BASE, Warner Robins, GA

*Docket No. 98-2613; Submitted on the Record;  
Issued August 18, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing.

On October 2, 1995 appellant, then a 41-year-old electrical engineer, filed a claim for a traumatic injury, Form CA-1, alleging that he injured his neck on June 23, 1994. He sought medical treatment June 23, 1994. The records indicates that, during that period, appellant was taking annual leave to be with a family member who was in the hospital. The records further indicates that he previously underwent a 2 level cervical fusion in 1986 and a 2 level fusion with a metal plate and screws in 1991. Appellant was diagnosed with a crack in the steel plate that was anchoring the fusion at C6-7 and a broken screw at C7.

By decision dated January 24, 1996, the Office denied appellant's claim for benefits on the grounds that the evidence of record failed to establish that he had sustained an employment-related injury on June 23, 1994. He requested reconsideration and the Office denied modification of its prior decision in decisions of June 11 and November 12, 1996 and January 9, 1997.

In a January 28, 1996 letter, appellant appealed to the Board and was assigned docket number 97-1043. In a March 10, 1998 letter, he advised that he wished to withdraw his appeal before the Board and request that the case be set for an oral hearing before an Office representative. In a March 27, 1998 order, the Board dismissed appellant's appeal under docket number 97-1043.

By decision dated June 25, 1998, the Office denied appellant's request for a hearing on the grounds that appellant was not entitled to a hearing as a matter of right as he had previously made a request for reconsideration. The Office further stated that the issue in appellant's case could be resolved by submitting additional evidence not previously considered.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As the record indicates that appellant filed his appeal with the Board on August 18, 1998, the only decision before the Board is the June 25, 1998 Office decision.

The Board finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124.

By decision dated June 25, 1998, the Office denied appellant's hearing request. The Office found that appellant was not entitled to a hearing as a matter of right because he had previously requested reconsideration. The Office exercised its discretion to conduct a limited review of the case and indicated that appellant's request could be addressed through a reconsideration application.

Section 8124(b)(1) of the Federal Employees' Compensation Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>2</sup>

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>3</sup> Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing,<sup>4</sup> when the request is made after the 30-day period for requesting a hearing<sup>5</sup> and when the request is for a second hearing on the same issue.<sup>6</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>7</sup>

In the present case, appellant's March 10, 1998 hearing request was made after he had requested reconsideration in connection with his claim and, thus, appellant was not entitled to a hearing as a matter of right. Appellant had three reconsideration decisions issued, the latest decision have been issued January 9, 1997, of the Office's January 24, 1996 decision. Hence the

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<sup>1</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> *John T. Horrigan*, 47 ECAB 166 (1995).

<sup>3</sup> *Philip G. Feland*, 47 ECAB 418 (1996).

<sup>4</sup> *Frederick D. Richardson*, 45 ECAB 454 (1994).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

Office was correct in finding that appellant was not entitled to a hearing as a matter of right because he made his hearing request after he had requested reconsideration.

The Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right. The Office, in its June 25, 1998 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the issue in the case could be resolved by submitting evidence not previously considered to the district office. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.<sup>8</sup> In the present case, the evidence of record does not indicate that the Office abused its discretion in connection with its denial of appellant's hearing request.

For these reasons, the Office properly denied appellant's request for a hearing.

The decision of the Office of Workers' Compensation Programs dated June 25, 1998 is affirmed.

Dated, Washington, D.C.  
August 18, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *Frederick D. Richardson, supra* note 4; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).